

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 150, INTERNATIONAL UNION OF
OPERATING ENGINEERS (IUOE), AFL-CIO
(MacAllister Machinery Co., Inc.)

and

CASE 07-CB-177422

MARK GRISHABER, an Individual

Scott R. Preston, Esq.,
for the General Counsel.
Charles R. Kiser and Melinda S. Hensel, Esqs.,
for the Respondent.
Allyson C. Werntz, Esq. (Jones Day),
for the Party-in-Interest.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This trial was held in Grand Rapids, Michigan on June 22 and 23, 2017. The complaint alleged, inter alia, that Local 150, International Union of Operating Engineers (IUOE), AFL-CIO (Local 150 or Respondent) violated §8(b)(1)(A) of the National Labor Relations Act (the Act) by lodging fines against several members of Local 324, International Union of Operating Engineers, AFL-CIO (Local 324) for refusing to violate the no-strike provision in Local 324's labor agreement with their employer, MacAllister Machinery Co., Inc. (MacAllister).

On the entire record, including my observation of the witnesses' demeanors, and after considering post-hearing briefs, I make the following

FINDINGS OF FACT¹

I. JURISDICTION

MacAllister, a corporation with Michigan and Indiana offices, rents construction

¹ Unless otherwise stated, factual findings arise from joint exhibits, stipulations, and undisputed evidence.

equipment. Annually, it earns over \$500,000 in gross revenues, and receives in Michigan goods worth over \$5,000 directly from other states. I find that it is an employer engaged in commerce under §2(2), (6), and (7) of the Act, and that Locals 150 and 324 are §2(5) labor organizations.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Collective Bargaining Relationship – MacAllister and Local 324*

MacAllister rents construction equipment from its Lansing and Niles, Michigan offices. Local 324 represents this appropriate unit at these locales (the Local 324 unit):²

All service and parts employees ... but excluding all other[s] ..., including ... office clerical[s]..., managers, supervisors, sales employees, professional employees, confidential employees, janitors and guards as defined in the ... Act.

(GC Exhs. 1, 27). The parties' recent labor contract memorializes this relationship; it runs from January 1, 2015 to December 31, 2017 (the 2015-17 CBA). (GC Exh. 27).

B. *2015-17 CBA – Work Stoppage Clause*

Local 324's 2015-17 CBA contains this work stoppage provision:

[Local 324] will not ... take part in, nor shall any member of the Union take part in, ... curtailment of work, ... strike, work stoppage, ... , sympathy strike, unfair labor practice strike, ... or any interference of operations

(GC Exh. 27 at 10).³

C. *Local 150's Efforts to Represent MacAllister's Indiana Site and the ULP Strike*

In 2015, Local 150 sought to represent MacAllister's South Bend, Indiana employees.⁴ This effort was unsuccessful and it lost the ensuing election. In November 2015, it responded with an unfair labor practice strike (the Local 150 ULP strike) against MacAllister in South Bend and its other Indiana jobsites.⁵

D. *Local 324 Unit Assignments into Indiana*

As would be expected, Local 150's ULP strike conflicted with the Local 324 unit's

² Under its charter, Local 324's jurisdiction is limited to Michigan.

³ The 2015-17 CBA permits employees, at their own discretion, to refuse to cross legitimate picket lines, provided that they grant reasonable notice to MacAllister. (Id. at 11).

⁴ Under its charter, Local 150's jurisdiction is limited to portions of Illinois, Iowa, and Indiana.

⁵ There was no evidence presented, which demonstrated that these ULPs were sustained.

ongoing ability to make uninterrupted Indiana deliveries.⁶ These Local 324 unit members consequently encountered Local 150's picket lines, and experienced significant interference during their Indiana routes (the affected Local 324 members): Mark Grishaber, Thomas Groning, Ryan Ritchie, Eric Noblitt, Robert Haisley, Charles Chastain, and Robert Zoerner. They generally ignored Local 150's picket lines, and completed their Indiana runs.

E. Local 150's Response to the Affected Local 324 Members Crossing Picket Lines

In late 2015,⁷ small groups of Local 150 representatives began assembling outside of MacAllister's Niles facility. They followed the affected Local 324 members on their Indiana assignments, tailgated them, requested their union cards, and chided them for not "clearing in" and crossing their Indiana picket lines.⁸ These events culminated in the affected Local 324 members being charged by Local 150 for violating the union's bylaws and constitution, and ultimately being found guilty and fined \$20,000 each for crossing Local 150's picket lines.⁹ (R. Exhs. 9-15). One of the affected Local 324 members, Grishaber, repeatedly sought clearance from Local 150 to make his Indiana runs, and was uniformly denied.

Local 150's actions also pressured the affected Local 324 members into eventually asking MacAllister to no longer assign them Indiana runs. In March 2016, MacAllister obliged, and subcontracted out their Indiana deliveries. This subcontract deeply reduced their workload, inasmuch as Indiana represented the lion's share of their deliveries. It is undisputed that the subcontract would not have been implemented, absent Local 150's fines and charges.

F. Limited Settlement of the Fines

On December 12, 2016, Locals 150 and 324 reached an agreement, which provided for the rescission of the charges and fines at issue (the Settlement). (R. Exh. 7). The Settlement indicated that future breaches would trigger additional charges and fines. (Id.).

G. Ongoing Impact on the Affected Local 324 Members

Five of the seven affected Local 324 unit members, i.e., Grishaber, Chastain, Zoerner, Noblitt and Groning, consequently rescinded their Local 324 memberships. They took this action in order to insulate themselves from future fines and make future Indiana runs without issue.¹⁰ (Tr. 132; R. Exh. 17). MacAllister has since ended its subcontract, and restored their former workload.

⁶ MacAllister regularly sent Local 324 employees from Niles on Indiana runs.

⁷ For compliance purposes, this date, which was estimated in the record, will be set as December 31, 2015.

⁸ "Clearing in" means obtaining authorization from Local 150 before entering Indiana to perform unit work.

⁹ Local 324 was obligated to collect these fines under its constitution. (Tr. 65).

¹⁰ Their fines flowed from their status as union members.

III. ANALYSIS

Local 150 unlawfully: charged and fined the affected Local 324 members for refusing to honor their Indiana picket lines; threatened them with additional fines unless they ceased their Indiana runs; prompted them to end their Indiana runs; and caused an associated reduction in their work hours. Under §8(b)(1)(A), a union cannot restrain or coerce employees in the exercise of their §7 rights. Although §8(b)(1)(A) does not impair the right of unions to set and enforce valid membership rules, these rights do not permit unions to penalize members, who comply with their labor contract's no-strike provisions. *Mine Workers Local 1249 (National Grinding)*, 176 NLRB 628, 632 (1969). The Board has, accordingly, found that allowing unions to penalize members, who refused to violate no-strike provisions, encourages unions to abort their contractual pledges and creates labor instability; such action is, therefore, invalid. *Teamsters Local 688 (Frito-Lay, Inc.)*, 345 NLRB 1150 (2005).

In the instant case, the 2015-17 CBA expressly barred Local 324 from engaging in sympathy strikes and other work stoppages. Local 150's punishment of the affected Local 324 members effectively penalized workers, who refused to violate a clearly-worded, no-strike ban in their labor agreement. Even though the discipline at issue was independently initiated by Local 150, and Local 324 played no role, it still amounted to an end-run around the clear work-stoppage clause in Local 324's 2015-17 CBA. Given that it is undisputed that Local 324's constitution would have obligated it to collect the fines, Local 150's actions effectively eviscerated Local 324's work stoppage clause. This is the very same evisceration of a no-strike clause, which was proscribed in *Teamsters Local 688 (Frito-Lay, Inc.)*. Moreover, to hold Local 150 blameless in this case, would allow Local 324 and other unions to openly escape clear work stoppage clauses by enlisting sister locals such as Local 150 to fine their members, whenever they felt the need to do so. This would create an untenable labor relations scenario for employers, render clear contractual provisions meaningless, and undercut labor relations stability. Even though Local 150 eventually rescinded the charges and fines, the affected Local 324 members lost substantial work opportunities after MacAllister, at their behest, subcontracted out their Indiana runs. Local 150's actions similarly caused them to remain under constant fear and pressure that further fines would be forthcoming, if they retained Local 324 membership, and ultimately forced their withdrawal from the union.

CONCLUSIONS OF LAW

1. MacAllister is an employer engaged in commerce under §2(2), (6), and 7 of the Act.

2. Locals 150 and 324 are labor organizations under §2(5) of the Act.

3. Local 150 violated §8(b)(1)(A) by threatening, charging, and fining Local 324 members Mark Grishaber, Thomas Groning, Ryan Ritchie, Eric Noblitt, Robert Haisley, Charles Chastain, and Robert Zoerner for refusing to honor picket lines, in violation of the no-strike provision in Local 324's labor agreement with MacAllister.

4. Local 150 violated §8(b)(1)(A) by prompting Local 324 members Mark Grishaber, Thomas Groning, Ryan Ritchie, Eric Noblitt, Robert Haisley, Charles Chastain, and Robert Zoerner to ask MacAllister to stop assigning them Indiana deliveries, and causing an associated loss in their wages and benefits for refusing to honor picket lines, in violation of the no-strike provision in Local 324's labor agreement with MacAllister.

5. Local 150 violated §8(b)(1)(A) by causing Local 324 members to withdraw their union membership in order to avoid additional threats, charges, and fines for refusing to honor picket lines, in violation of the no-strike provision in Local 324's labor agreement with MacAllister.

6. These unfair labor practices affect commerce under §2(6) and (7) of the Act.

REMEDY

Having found that Local 150 has violated the Act, it is ordered to cease and desist, and take certain affirmative action. Although the record reveals that Local 150 vacated the charges and fines lodged against Grishaber, Groning, Ritchie, Noblitt, Haisley, Chastain, and Zoerner, and expunged their records, it must make them whole for any wages and benefits lost in connection with their loss of Indiana assignments. This make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), and compounded daily as prescribed by *Kentucky River Medical Center*, 356 NLRB 6 (2010). Also, because Grishaber, Chastain, Zoerner, Noblitt, and Groning withdrew their Local 324 memberships due to Local 150's unlawful actions, they shall be made whole for union benefits lost, *if any*, as a result of such withdrawal (e.g., lost hiring hall benefits, welfare fund benefits, training benefits, scholarship benefits, etc.). This make whole remedy shall be computed in the manner described above. Local 150 must distribute remedial notices electronically via email, intranet, internet, or other valid electronic means to its members, in addition to the traditional physical paper posting. *J Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹¹

ORDER

Local 150, its officers, agents, and representatives shall

1. Cease and desist from

a. Threatening, charging, and fining Local 324 members who refuse to

¹¹ If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

honor picket lines, in violation of the no-strike provision in Local 324's labor contract with MacAllister.

b. Prompting Local 324 members to ask MacAllister to stop assigning them Indiana runs for refusing to honor picket lines, in violation of the no-strike provision in Local 324's labor agreement with MacAllister.

c. Causing Local 324 members to withdraw as union members for refusing to honor picket lines, in violation of the no-strike provision in Local 324's labor agreement with MacAllister.

d. In any like or related manner restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

a. Make Grishaber, Groning, Ritchie, Noblitt, Haisley, Chastain, and Zoerner whole for any lost wages and benefits, plus interest, as set forth in the remedy.

b. Make Grishaber, Chastain, Zoerner, Noblitt, and Groning whole for any losses associated with their withdrawal as Local 324 members, as set forth in the remedy.

c. Within 14 days after service by the Region, post at all places where notices to members are posted copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Local 150's authorized representative, shall be posted by it and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if it customarily communicates with its members by such means. Reasonable steps shall be taken by it to ensure that the notices are not altered, defaced, or covered by any other material.

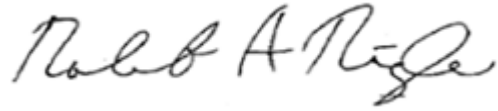
d. Within 14 days after service by the Region, deliver to the Regional Director for Region 7 signed copies of the notice in sufficient numbers for posting by MacAllister, if the employer wishes to do so, at its Niles, Michigan facility in all places where notices to employees and members are customarily posted.

e. Within 14 days after service by the Region, duplicate and mail, at its own expense, a copy of the Notice to all employees of MacAllister, who were represented by Local 324 at any time since December 31, 2015.

¹² If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

f. Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

Dated, Washington, D.C. November 3, 2017

A handwritten signature in black ink, appearing to read "Robert A. Ringler". The signature is fluid and cursive, with the first name "Robert" and last name "Ringler" being the most legible parts. It is positioned above a horizontal line.

Robert A. Ringler
Administrative Law Judge

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT threaten, charge or fine Local 324, International Union of Operating Engineers, AFL–CIO members (Local 324) who refuse to honor our picket lines, in violation of the no-strike clause in Local 324’s labor agreement with MacAllister Machinery Co., Inc. (MacAllister).

WE WILL NOT cause Local 324 members to ask MacAllister to stop assigning them dispatches into Indiana and cause them to lose wages and benefits for refusing to honor our picket lines, in violation of the no-strike clause in Local 324’s labor agreement with MacAllister.

WE WILL NOT cause Local 324 members to withdraw their union membership, in order to avoid our threats, charges, and fines for refusing to honor our picket lines, in violation of the no-strike clause in Local 324’s labor agreement with MacAllister.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL reimburse Mark Grishaber, Thomas Groning, Ryan Ritchie, Eric Noblitt, Robert Haisley, Charles Chastain, and Robert Zoerner for any lost wages and benefits associated with us causing them to request MacAllister to no longer assign them Indiana dispatches, plus interest.

WE WILL reimburse Mark Grishaber, Charles Chastain, Robert Zoerner, Eric Noblitt, and Thomas Groning for any lost union benefits associated with their withdrawal of their Local 324 membership, plus interest.

**LOCAL 150, INTERNATIONAL UNION OF
OPERATING ENGINEERS (IUOE), AFL-CIO**

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

477 Michigan Avenue, Room 300, Detroit, MI 48226-2543
(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/07-CB-177422 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (313) 335-8042.